

1 ROGER P. CROTEAU, ESQ.
2 Nevada Bar No. 4958
3 TIMOTHY E. RHODA, ESQ.
4 Nevada Bar No. 7878
5 ROGER P. CROTEAU & ASSOCIATES, LTD.
6 720 South Fourth Street, Suite 202
7 Las Vegas, Nevada 89101
8 (702) 254-7775
9 (702) 228-7719 (facsimile)
10 croteaulaw@croteaulaw.com
11 *Attorney for Plaintiff*
12 **JAMES ROOT**

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

29 JAMES ROOT, an individual,)
30)
31 Plaintiff,) Case No. 2:09-cv-1940-LDG-RJJ
32 vs.)
33)
34 DESERT PALACE, INC., a Nevada)
35 corporation d/b/a CAESARS PALACE HOTEL)
36 & CASINO; LAS VEGAS METROPOLITAN)
37 POLICE DEPARTMENT; DOES I through V;)
38 and ROE CORPORATIONS VI through X,)
39 Defendants.)
40 _____

PLAINTIFF'S MOTION TO VOLUNTARILY DISMISS AS TO

DEFENDANT, LAS VEGAS METROPOLITAN POLICE DEPARTMENT

41 COMES NOW, Plaintiff, JAMES ROOT, by and through his attorneys, ROGER P.
42 CROTEAU & ASSOCIATES, LTD., and hereby moves for leave to voluntarily dismiss the
43 instant action as it relates to Las Vegas Metropolitan Police Department ("LVMPD"). This
44 Motion is made and based upon the papers and pleadings on file herein, the points and
45 //

//

ROGER P. CROTEAU & ASSOCIATES, LTD.
 • 720 South Fourth Street, Suite 202 • Las Vegas, Nevada 89101 •
 Telephone: (702) 254-7775 • Facsimile (702) 228-7719

authorities submitted in support hereof, and any oral argument that this Honorable Court may entertain at the hearing of this matter.

DATED this 26th day of April, 2011.

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

5
 6 
 7 TIMOTHY E. KHODA, ESQ.
 8 Nevada Bar No. 7878
 9 720 South Fourth Street, Suite 202
 10 Las Vegas, Nevada 89101
 11 (702) 254-7775
 12 *Attorneys for Plaintiff*
 13 JAMES ROOT

POINTS AND AUTHORITIES

STATEMENT OF RELEVANT FACTS

The instant action arises out of an incident that occurred upon the premises commonly known as the Caesars Palace Hotel & Casino, located at 3570 Las Vegas Boulevard South, Las Vegas, Nevada 89109 (*the "Premises"*) on or about December 1, 2006. On said date, Plaintiff was legally upon the Premises playing blackjack as a patron and business invitee of DESERT PALACE, INC., a Nevada corporation d/b/a CAESARS PALACE HOTEL & CASINO ("Caesars"). Plaintiff's causes of action arise from his claimed unlawful detention by agents and employees of Caesars, as well as by LVMPD.

On or about March 24, 2011, LVMPD filed a Motion to Compel Discovery related to written discovery that it had served. At approximately the same time, Plaintiff was in the process of attempting to negotiate a settlement of the matter. This was in part the reason that the discovery responses were not completed in a timely manner. Ultimately, Plaintiff negotiated a confidential resolution of the matter as it relates to Caesars. Plaintiff thereafter contacted counsel for LVMPD to inquire whether it would stipulate to the dismissal of the action. Counsel for LVMPD responded that he would contact his client.

As a result of the anticipated resolution of the matter and his expectation that the Motion

would therefore become moot, Plaintiff's counsel did not file a response to the Motion to Compel Discovery. On April 20, 2011, the court entered a Minute Order granting the Motion to Compel Discovery. Thereafter, on April 25, 2011, counsel for LVMPD advised that his client would not stipulate to the dismissal of the action because it viewed the action as frivolous and because it wished to attempt to recover its attorneys' fees and costs.

To date, most of the work that has been done on this case has related to the Defendants' efforts to have the matter dismissed for failure to timely serve the Defendants. This issue was resolved in favor of the Plaintiff. Not until February, 2011, did the Defendants cause Answers to be filed to the Complaint. In short, LVMPD has not incurred a great deal of expense related to the action.

LEGAL ARGUMENT

A. STATEMENT OF THE LAW

Federal Rule of Civil Procedure 41 governs the dismissal of actions, stating in pertinent part as follows:

(a) Voluntary Dismissal.

(1) By the Plaintiff.

...

(2) By Court Order; Effect.

Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

B. PLAINTIFF HAS ACTED IN GOOD FAITH

Contrary to the views of LVMPD, the instant action was not filed in bad faith. There is no dispute that the Plaintiff was handcuffed and detained by Caesars and LVMPD. There is little dispute that the Plaintiff was detained without good cause. Specifically, the detention was based upon warrants which were not active. The primary dispute is whether the Defendants knew that this was the case and whether they thus knowingly wrongfully detained the Plaintiff. Further questions exist as to whether the LVMPD conspired with Caesars personnel to help fabricate a

1 basis for their actions.

2 Although the Plaintiff continues to feel that he possesses valid claims for relief against
3 LVMPD, various factors, including financial considerations, are making it difficult for the
4 Plaintiff to proceed. As a result, he has offered to dismiss the action as to LVMPD with
5 prejudice. LVMPD is unwilling to agree to such a dismissal.

6 **C. LVMPD HAS NOT BEEN PREJUDICED**

7 It is unclear why LVMPD refuses to agree to the dismissal of this matter. LVMPD did
8 not file a Counterclaim and possesses no claims against the Plaintiff. While LVMPD has
9 retained counsel, not a great deal of work has been done on the case. This is particularly true
10 considering the length of time that the case has been pending. Answers were only recently filed
11 and the majority of the work that has been done related to the efforts of the Defendants to have
12 the action dismissed for an alleged failure to timely serve the Defendants. This issue was
13 resolved in favor of the Plaintiff. LVMPD has not incurred great expense to date.

14 **D. GOOD CAUSE EXISTS TO DISMISS THIS ACTION**

15 If forced to do so, Plaintiff will continue to prosecute its case against LVMPD.
16 Obviously, a Judgment will be entered against LVMPD in the event that the Plaintiff prevails.
17 At the very least, it is going to cost LVMPD a great deal more money to proceed to trial. The
18 Plaintiff's proposed dismissal of the action will alleviate all of these potential expenses.

19 While LVMPD apparently wishes to attempt to recover what it has spent so far on this
20 case, the likelihood of successfully doing so is extremely small. Plaintiff is not in a financial
21 position to offer to compensate LVMPD for its fees and costs. The best that he can do is exactly
22 what he is proposing. In the event that a substantial award of fees and costs were to be awarded
23 to LVMPD in the future, the Plaintiff would likely be forced to seek bankruptcy protection.

24 Plaintiff and Plaintiff's counsel are aware that this Court is very busy. At this point,
25 given the Plaintiff's willingness to dismiss the action, this case is clogging the court system and
26 causing and will cause additional work for the Court and its staff. The only reason this action
27 will be pending is LVMPD's refusal to agree to a dismissal.

CONCLUSION

The Plaintiff has acted in good faith at all times. LVMPD has suffered little harm and possesses no claims against the Plaintiff. There is quite simply no reason for this case to continue drain upon the Court's resources. Based on the foregoing, Plaintiff respectfully requests that this honorable court grant Plaintiff's Motion to Voluntarily Dismiss as to Defendant, LVMPD with each party bearing its own costs and attorneys' fees.

DATED this 26th day of April, 2011.

ROGER P. CROTEAU & ASSOCIATES, LTD.

**TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
720 South Fourth Street, Suite 202
Las Vegas, Nevada 89101
(702) 254-7775**

CERTIFICATE OF MAILING

I hereby certify that on the 26 day of April, 2011, I served a copy of the foregoing
PLAINTIFF'S MOTION TO VOLUNTARILY DISMISS AS TO DEFENDANT, LAS
VEGAS METROPOLITAN POLICE DEPARTMENT, by causing a copy of the same to be
deposited in the United States mail, postage prepaid, addressed as follows:

Craig R. Anderson, Esq.
MARQUIS & AURBACH
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Defendant
**LAS VEGAS METROPOLITAN
POLICE DEPARTMENT**

David M. Jones, Esq.
OLSON, CANNON, GORMLEY
& DESRUISSEAUX
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
Attorneys for Defendant
DESERT PALACE, INC.

ORDER

IT IS SO ORDERED.

DATED this 3 day of May, 2011.

~~An employee of ROGER P. CROTEAU & ASSOCIATES, LTD.~~

Lloyd D. George
Sr. U.S. District Judge